

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 10th day of November, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 430 of 1997

1. Shankar Prasad, aged about 36 years.
2. Mahendra, aged about 35 years.
3. Mishri Lal, aged about 33 years.
4. Ashok Kumar, aged about 21 years.

All R/O 263/204-B, Nayapura, Kareli, Allahabad.

..... Applicants.

Counsel for applicants : Sri R.K. Nigam.

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. Senior Divisional Electrical Engineer (TRD), N. Railway,
Allahabad..... Respondents.

Counsel for respondents : Sri A.K. Gaur.

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the punishment order dated 2.10.89 (Annexure A-1) by which the penalty of removal from service was imposed upon him which was upheld by the Appellate Authority in its order dated 4.6.90 (Annexure A-2). He has further prayed for quashing the order dated 17th Jan./16th Feb., 1997 by which the Appellate Authority has rejected the appeal which he filed when the case was remanded to the Appellate Authority by this Tribunal (Annexure A-3). He has further prayed for issuance of direction to the respondents for his reinstatement in service on his original post with all back wages and consequential benefits including the seniority etc.

2. Briefly stated, this is the second round of

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litigation by the applicant. The applicant, at the relevant time, was working as Electrical Chargeman at Aligarh. Under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968, the disciplinary proceeding was initiated against him by issue of a charge memo dated 19.10.89. The main charge against the applicant was that he by giving false declaration got the Railway pass/PTO in favour of his son, who was more than 21 years of age and was not a student in any school recognised by the Government. In this way he has violated Rule 3-1(i) and (ii) of the Discipline and Conduct Rules.

3. The Inquiry Officer was appointed and the inquiry was conducted as per the provisions of the Rule and the Inquiry Officer found him guilty, who submitted his report to the Disciplinary Authority, who passed an order imposing the penalty of removal from service. On appeal, the Appellate Authority confirmed the punishment order passed by the Disciplinary Authority. The applicant's revision also met the same fate.

4. Aggrieved with the impugned orders, the applicant filed O.A. No.984/90 which was decided by an order dated 17.9.96 and the operative portion of the order is as under :-

7 "In the light of the above deliberations, we quash the orders of the appellate and revision authority and remand this case to the appellate authority to consider the appeal afresh as detailed in para 9 above for proper decision. The compliance shall be done within four months from the date of receipt of this order. There is no order as to costs."

5. The Appellate Authority on receipt of the decision of this Tribunal, granted the applicant personal hearing and passed a detailed speaking order which is at Annexure-A-3 and this is also under challenge by the applicant in this O.A.

6. The applicant has assailed the impugned orders on various grounds enumerated in Para 5 and its various

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sub paragraphs. The first ground of challenge is that the applicant was not given a reasonable opportunity and was denied the relied upon documents during the enquiry. Second ground to challenge the order is that he was deprived of the opportunity of cross examining the prosecution witnesses as the charge memo did not mention the name of any prosecution witness. He has further alleged that the Inquiry Officer's questions were not of clarificatory nature but were clearly of interrogatory in nature. He has further alleged that the Disciplinary Authority did not apply his mind and the Appellate Authority's order is cryptic. The applicant has concluded his pleadings by saying that since the chargesheet is vague, the inquiry proceedings were vitiated and the impugned orders have been issued without application of mind, these orders may be set aside and the O.A. may be allowed.

7. The respondents, on the other hand, have opposed the contentions/claim of the applicant and have filed a detailed counter affidavit. The counsel for respondents has also separately filed a written statement/argument. It has been submitted that the applicant was provided all reasonable opportunity as per the provisions of the Rule. It has been submitted that it was a gross misconduct on the part of the employee to take privilege pass for his son who was not entitled to be included in the privilege pass being crossed the age of 21 years and on this ground the disciplinary proceedings was initiated against him and after following the prescribed procedure, he has been removed from service. It has been submitted that in so far as the question of relied upon documents is concerned, he was allowed to inspect all the relevant documents on 23.12.1987 in presence of his Defence Helper. On the direction of this Court, the applicant was given personal hearing and after a detailed speaking order was passed on 17.1.1997. The respondents have also argued that there was no prosecution witness in the case and the question of cross examination does not arise.

Defence

8. We have very carefully considered the rival submissions made by counsel for the either side. We have perused the records as well as the written arguments submitted by the counsel for the respondents.

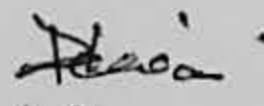
9. During the course of argument, learned counsel for the applicant has reiterated the facts and the legal grounds mentioned in the pleadings of the applicant. He has concluded his argument with the prayer that the punishment imposed upon the applicant is too harsh and the Tribunal may consider to substitute the punishment of removal to that of punishment of compulsory retirement. The learned counsel for respondents, however, have opposed it on the ground that the power to inflict the punishment is the exclusive jurisdiction of the administration/competent authority. In his written argument he has relied on the decision of the Supreme Court in the case of *Parmanand Vs. Union of India & others*, 1996 SCC (L&S) 484 wherein it has been held that quantum of punishment cannot be interfered with unless it is shockingly disproportionate. He has further stated that it is a settled principles of law that when the enquiry is found to be faulty, it should not be proper to direct reinstatement with consequential benefits but the matter may be remanded back to the Disciplinary Authority to follow the procedure from the stage of fault was pointed out JT 1996 (5) SC 403. The respondents have submitted that the applicant has failed to make out any case that the punishment given to him was too harsh that was shockingly disproportionate. In view of this, the learned counsel for respondents asserts that the O.A. deserves to be dismissed.

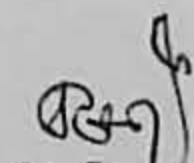
10. It is settled proposition of law that the Tribunal is not supposed to act as an Appellate Authority to re-appraise, and create the evidence and substitute its finding to arrive at the conclusion that charges has been proved. This firm legal position flows from the various decisions of the Apex Court namely, *B.C. Chaturvedi Vs.*

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Union of India & others (1995) 8 JT (SC) State of Tamilnadu Vs. T.V. Venugopal (1994) 6 SCC 302, Tamilnadu Vs. S. Subramaniam, AIR 1996 SC 4802 and Syed Rahimuddin Vs. DG, CSIR, 2001 AIR SCW 2388. In the backdrop of the law laid down in the aforesaid decision, we find that since the charges against the applicant stood duly proved in an inquiry which was conducted in conformity with the procedure prescribed in the rules, this Tribunal would not interfere with the order of punishment passed against the applicant. Moreover, during the pendency of this O.A., the applicant expired and the case is being contested by his legal heirs who have been substituted by the order of this Tribunal.

11. In view of the facts mentioned above and the discussions made, we do not find any good ground for interference with the impugned orders. Accordingly, the O.A. is dismissed with no order as to costs.


A.M.


V.C.

Asthana/